

FILED

STATE OF INDIANA

COUNTY HAMILTON

STATE OF INDIANA,

Plaintiff,

v.

EQUITY ACCELERATION, INC., and
JOHN EVERETT DAVIS,
individually and doing business as
EQUITY ACCELERATION, INC.,

Defendant.

IN THE HAMILTON CIRCUIT COURT

CAUSE NO. 29C01-0405 PL 646

**COMPLAINT FOR INJUNCTION, RESTITUTION,
CIVIL PENALTIES AND COSTS**

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Terry Tolliver, petitions the court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-1, *et seq.* for injunctive relief, consumer restitution, civil penalties, investigative costs, and other relief.

PARTIES

1. The Plaintiff, State of Indiana, is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code § 24-5-0.5-4(c).

2. The Defendant, Equity Acceleration, Inc. ("Equity"), is an Indiana corporation formed on May 9, 1997, with a principal place of business in Hamilton County, located at 904 S. Hamilton Street, Sheridan, Indiana 46069. At all relevant times, Equity was engaged in the business of making bi-weekly mortgage payments for consumers.

3. The Defendant, John Everett Davis ("Davis"), is an individual engaged in the business of making bi-weekly mortgage payments for consumers with a principal place of business in Hamilton County, located at 7309 Oakbay Drive, Noblesville, Indiana 46060.

4. The Defendant, John Everett Davis, at all relevant times, has acted as an officer and agent of Equity Acceleration, Inc. When, in this Complaint, reference is made to any act of the aforementioned Defendants, whether acting individually, jointly, or severally, such allegations shall be deemed to mean that the principals, agents, or employees of the Defendant did or authorized such acts to be done while actively engaged in the management, direction, or control of the affairs of said Defendant and while acting within the scope of their duties, employment, or agency.

FACTS

5. As the alter ego of Equity Acceleration, Inc., Davis has been conducting, managing, and controlling the affairs of the company as if it were his own business, and he has used the Defendant company for the purpose of defrauding consumers as hereinafter set forth.

6. Beginning in 1997, the Defendants solicited consumers and/or assumed contracts from a former company, whereby the Defendants agreed to make bi-weekly mortgage payments on behalf of consumers.

7. Pursuant to the contracts, the Defendants agreed to accept funds from consumers and make bi-weekly mortgage payments on behalf of the consumers.

8. As a result of the bi-weekly mortgage payments, one additional mortgage payment would be made each year.

9. Due to the additional principal payment made on the mortgage, the total interest due would be lessened with the end result being consumers' mortgages being paid off sooner.

A. Allegations Regarding Allana Bourne.

10. On or about May 14, 1999, the Defendants entered into a consumer transaction with Allana Bourne ("Bourne") of Seattle, Washington, wherein the Defendants agreed to make bi-weekly mortgage payments on behalf of Bourne, by withdrawing funds from Bourne's checking account twice a month.

11. On February 11, 2003, the Defendants debited Six Hundred Twenty-One and 33/100 Dollars (\$621.33) from Bourne's account, representing the first installment for the March 2003 payment.

12. On February 25, 2003, the Defendants debited Six Hundred Twenty-One and 33/100 Dollars (\$621.33) from Bourne's account, representing the second installment for the March 2003 payment.

13. On March 11, 2003, the Defendants debited Six Hundred Twenty-One and 33/100 Dollars (\$621.33) from Bourne's account, representing the first installment for the April 2003 payment.

14. On March 25, 2003, the Defendants debited Six Hundred Twenty-One and 33/100 Dollars (\$621.33) from Bourne's account, representing the second installment for the April 2003 payment.

15. On March 19, 2003, Bourne received a letter from her mortgage company stating that her loan payment for March 1, 2003, had not been paid and that One Thousand Three Hundred Nine and 54/100 Dollars (\$1,309.54) was currently due, including a late charge of Sixty-One and 88/100 Dollars (\$61.88), that was included due to the Defendants' failure to make the payments.

16. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the contract that they would perform the contracted services within a reasonable period of time.

17. The Defendants have yet to either make the mortgage payments, or issue a refund to Bourne.

B. Allegations Regarding Joseph Caratenuto.

18. In 1991, the Defendants entered into a consumer transaction with Joseph Caratenuto ("Caratenuto") of Ballwin, Missouri, wherein the Defendants agreed to make bi-weekly mortgage payments on behalf of Caratenuto, by withdrawing funds from Caratenuto's checking account twice a month.

19. On February 4, 2003, the Defendants debited Four Hundred Thirty and 36/100 Dollars (\$430.36) from Caratenuto's account, representing the first installment for the March 2003 payment.

20. On February 18, 2003, the Defendants debited Four Hundred Thirty and 36/100 Dollars (\$430.36) from Caratenuto's account, representing the second installment for the March 2003 payment.

21. On March 5, 2003, the Defendants debited Four Hundred Thirty and 36/100 Dollars (\$430.36) from Caratenuto's account, representing the first installment for the April 2003 payment.

22. On March 20, 2003, the Defendants withdrew Four Hundred Thirty and 36/100 Dollars (\$430.36) from Caratenuto's account, representing the second installment for the April 2003 payment.

23. On April 1, 2003, the Defendants debited Four Hundred Thirty and 36/100 Dollars (\$430.36) from Caratenuto's account, representing the first installment of May 2003 payment.

24. On April 21, 2003, Caratenuto received a letter from his mortgage company stating that his loan payments for March and April, 2003, had not been paid and was currently due.

25. The Defendants had withdrawn Two Thousand One Hundred Fifty-One and 80/100 Dollars (\$2,151.80) from Caratenuto's account and failed to make the March, April, and May mortgage payments on behalf of Caratenuto.

26. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the contract that they would perform the contracted services within a reasonable period of time.

27. The Defendants have yet to either make the mortgage payments, or issue a refund to Caratenuto.

C. Allegations Regarding Gheyas and Ghazala Iqbal.

28. On or about November 1997, the Defendants entered into a consumer transaction with Gheyas and Ghazala Iqbal ("the Iqbals") of New Hyde Park, New York, wherein the Defendants agreed to make bi-weekly mortgage payments on behalf of the Iqbals by withdrawing funds from the Iqbals' checking account twice a month.

29. On February 10, 2003, the Defendants debited Eight Hundred Twenty-Five and 86/100 Dollars (\$825.86) from the Iqbals' checking account representing the first installment for the March 2003 payment.

30. On February 24, 2003, the Defendants debited Eight Hundred Twenty-Five and 86/100 Dollars (\$825.86) from the Iqbals' checking account representing the second installment for the March 2003 payment.

31. On March 10, 2003, the Defendants debited Eight Hundred Twenty-Five and 86/100 Dollars (\$825.86) from the Iqbals' checking account representing the first installment for the April 2003 payment.

32. On March 24, 2003, the Defendants debited Eight Hundred Twenty-Five and 86/100 Dollars (\$825.86) from the Iqbals' checking account representing the second installment for the April 2003 payment.

33. On April 7, 2003, the Iqbals received a letter from Chase Manhattan Mortgage Corporation stating that their loan installments for March and April, had not been paid and that Two Thousand Nine Hundred Eighty-Six and 05/100 Dollars (\$2,986.05) was currently due.

34. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the contract that they would perform the contracted services within a reasonable period of time.

35. The Defendants have yet to either make the mortgage payments, or issue a refund to the Iqbals.

D. Allegations Regarding Arnold Ligtenberg.

36. On or about April 19, 1999, the Defendants entered into a consumer transaction with Arnold Ligtenberg ("Ligtenberg") of Snohomish, Washington, wherein the Defendants agreed to make bi-weekly mortgage payments on behalf of Ligtenberg, by withdrawing funds from Ligtenberg's checking account twice a month.

37. On January 10, 2003, the Defendants debited Six Hundred Seventy-Six and 96/100 Dollars (\$676.96) from Ligtenberg's checking account representing the first installment for the February 2003 payment.

38. On January 24, 2003, the Defendants debited Six Hundred Seventy-Six and 96/100 Dollars (\$676.96) from Ligtenberg's checking account representing the second installment for the February 2003 payment.

39. On February 7, 2003, the Defendants debited Six Hundred Seventy-Six and 96/100 Dollars (\$676.96) from Ligtenberg's checking account representing the first installment for the March 2003 payment.

40. On February 21, 2003, the Defendants debited Six Hundred Seventy-Six and 96/100 Dollars (\$676.96) from Ligtenberg's checking account representing the second installment for the March 2003 payment.

41. On March 7, 2003, the Defendants debited Six Hundred Seventy-Six and 96/100 Dollars (\$676.96) from Ligtenberg's checking account representing the first installment for the April 2003 payment.

42. On March 21, 2003, the Defendants debited Six Hundred Seventy-Six and 96/100 Dollars (\$676.96) from Ligtenberg's checking account representing the second installment for the April 2003 payment.

43. On April 9, 2003, Ligtenberg received a letter from First Horizon Home Loans stating that his loan installments for February and March had not been paid and was currently due.

44. The Defendants had withdrawn Three Thousand Twenty-Nine and 94/100 Dollars (\$3,029.94) from Ligtenberg's account and failed to make the February, March, and April mortgage payments on behalf of Ligtenberg.

45. The Defendants had withdrawn Two Thousand One Hundred Fifty-One and 80/100 Dollars (\$2,151.80) from Caratenuto's account and failed to make the March, April, and May mortgage payments on behalf of Caratenuto.

46. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the contract that they would perform the contracted services within a reasonable period of time.

47. The Defendants have yet to either make the mortgage payments, or issue a refund to Ligtenberg.

E. Allegations Regarding Benvindo Marques.

48. On or about March 8, 1996, the Defendants entered into a consumer transaction with Benvindo Marques ("Marques") of Clark, New Jersey, wherein the Defendants agreed to make bi-weekly mortgage payments on behalf of Marques, by withdrawing funds from Marques' checking account twice a month.

49. On February 14, 2003, the Defendants debited Six Hundred Three and 51/100 Dollars (\$603.51) from Marques' account, representing the first installment for the March 2003 payment.

50. On February 28, 2003, the Defendants debited Six Hundred Three and 51/100 Dollars (\$603.51) from Marques' account, representing the second installment for the March 2003 payment.

51. On March 14, 2003, the Defendants debited Six Hundred Three and 51/100 Dollars (\$603.51) from Marques' account, representing the first installment for the April 2003 payment.

52. On March 28, 2003, the Defendants debited Six Hundred Three and 51/100 Dollars (\$603.51) from Marques' account, representing the second installment for the April 2003 payment.

53. On April 15, 2003, Marques received a letter from his mortgage company stating that his loan payment for March and April 2003, had not been paid and that One Thousand Nine Hundred Twenty-Four and 97/100 Dollars (\$1,924.97) was currently due, including late charges that were included due to the Defendants' failure to make the payments.

54. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the contract that they would perform the contracted services within a reasonable period of time.

55. The Defendants have yet to either make the mortgage payments, or issue a refund to Marques.

F. Allegations Regarding Doug and Lynne Morra.

56. The Defendants entered into a consumer transaction with Doug and Lynne Morra ("the Morras") of Hopewell Junction, New York, wherein the Defendants agreed to make bi-weekly mortgage payments on behalf of the Morras, by withdrawing funds from the Morras' checking account twice a month

57. In January 2003, the Defendants debited Six Hundred Twenty-Four and 65/100 Dollars (\$624.65) from the Morras' checking account representing the February 2003 payment.

58. In March 2003, the Morras received a letter from their mortgage company stating that their loan installment for February 2003 had not been paid and that Six Hundred Twenty-Four and 65/100 Dollars (\$624.65) was currently due.

59. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the contract that they would perform the contracted services within a reasonable period of time.

60. The Defendants have yet to either make the mortgage payments, or issue a refund to the Morras.

G. Allegations Regarding Virginia Pollard.

61. On or about 1991, the Defendants entered into a consumer transaction with Virginia Pollard ("Pollard") of Little Rock, Arkansas, wherein the Defendants agreed to make bi-weekly mortgage payments on behalf of Pollard, by withdrawing funds from Pollard's checking account twice a month.

62. On November 14, 2002, the Defendants debited Four Hundred Thirty and 00/100 Dollars (\$430.00) from Pollard's account, representing the first installment for the December 2002 payment.

63. On November 28, 2002, the Defendants debited Four Hundred Thirty and 00/100 Dollars (\$430.00) from Pollard's account, representing the second installment for the December 2002 payment.

64. On December 12, 2002, the Defendants debited Four Hundred Thirty and 00/100 Dollars (\$430.00) from Pollard's account, representing the first installment for the January 2003 payment.

65. On December 18, 2002, Pollard sent a letter to the Defendants advising them that she was in the process of refinancing her home and asking that the Defendants cease from withdrawing any funds until further notice.

66. On or about December 20, 2003, Pollard received a letter from her mortgage company, enclosing a check from the Defendants, stating that her loan had been paid in full due to refinancing.

67. On December 26, 2002, the Defendants debited Four Hundred Thirty and 00/100 Dollars (\$430.00) from Pollard's account, representing the second installment for the January 2003 payment.

68. Despite the refinancing and notice to cease the withdrawals, the Defendants continued to withdraw funds from Pollard's account in January, February, and March, resulting in a total of One Thousand Two Hundred Seventy-Eight and 00/100 Dollars (\$1,278.00) being withdrawn, which has not been applied to Pollard's mortgage.

69. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the contract that they would issue a refund for the unauthorized withdrawals within a reasonable period of time.

70. The Defendants have yet to either make the mortgage payments, or issue a refund to Pollard.

H. Allegations Regarding Paula Reynolds.

71. On or about November 3, 1997, the Defendants entered into a consumer transaction with Paula Reynolds ("Reynolds") of Havre, Montana, wherein the Defendants agreed to make bi-weekly mortgage payments on behalf of Reynolds, by having Reynolds send in payments twice a month.

72. On January 15, 2003, Reynolds paid Two Hundred Seventy and 00/100 Dollars (\$270.00) to the Defendants, representing the first installment for the February 2003 payment.

73. On January 31, 2003, Reynolds paid Two Hundred Seventy and 00/100 Dollars (\$270.00) to the Defendants, representing the second installment for the February 2003 payment.

74. On February 17, 2003, Reynolds paid Two Hundred Seventy and 00/100 Dollars (\$270.00) to the Defendants, representing the first installment for the March 2003 payment.

75. On March 1, 2003, Reynolds paid Two Hundred Seventy and 00/100 Dollars (\$270.00) to the Defendants, representing the second installment for the March 2003 payment.

76. On March 20, 2003, Reynolds paid Two Hundred Seventy and 00/100 Dollars (\$270.00) to the Defendants, representing the first installment for the April 2003 payment.

77. On April 3, 2003, Reynolds paid Two Hundred Seventy and 00/100 Dollars (\$270.00) to the Defendants, representing the second installment for the April 2003 payment.

78. On April 15, 2003, Reynolds paid Two Hundred Seventy and 00/100 Dollars (\$270.00) to the Defendants, representing the first installment for the May 2003 payment.

79. On May 2, 2003, Reynolds paid Two Hundred Seventy and 00/100 Dollars (\$270.00) to the Defendants, representing the second installment for the May 2003 payment.

80. On April 30, 2003, Reynolds received a letter from her mortgage company stating that her loan payments for February, March, April, and May 2003, had not been paid.

81. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the contract that they would perform the contracted services within a reasonable period of time.

82. The Defendants have yet to either make the mortgage payments, or issue a refund to Reynolds.

I. Allegations Regarding Walter Morris.

83. On or about December 11, 1998, the Defendants entered into a consumer transaction with Walter Morris ("Morris") of Wheat Ridge, Colorado, wherein the Defendants agreed to make bi-weekly mortgage payments on behalf of Marques, by withdrawing funds from Morris' checking account twice a month.

84. On February 5, 2003, the Defendants debited Six Hundred Forty-Six and 31/100 Dollars (\$646.31) from Morris' checking account representing the first installment for the March 2003 payment.

85. On February 15, 2003, the Defendants debited Six Hundred Forty-Six and 31/100 Dollars (\$646.31) from Morris' checking account representing the second installment for the March 2003 payment.

86. On March 5, 2003, the Defendants debited Six Hundred Forty-Six and 31/100 Dollars (\$646.31) from Morris' checking account representing the first installment for the April 2003 payment.

87. On March 15, 2003, the Defendants debited Six Hundred Forty-Six and 31/100 Dollars (\$646.31) from Morris' checking account representing the second installment for the April 2003 payment.

88. On or about April 20, 2003, Morris received a letter from Wells Fargo stating that his March and April loan installments had not been paid and had incurred late charges due to the Defendants' failure to make the payments.

89. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the contract that they would perform the contracted services within a reasonable period of time.

90. The Defendants have yet to either make the mortgage payments, or issue a refund to Morris.

J. Allegations Regarding Patricia Walsh.

91. On or about July 9, 1998, the Defendants entered into a consumer transaction with Patricia Walsh ("Walsh") of Worcester, Maryland, wherein the Defendants agreed to make bi-weekly mortgage payments on behalf of Walsh, by withdrawing funds from Walsh's checking account twice a month.

92. On February 14, 2003, the Defendants debited Five Hundred Forty-Five and 00/100 Dollars (\$545.00) from Walsh's account, representing the first installment for the March 2003 payment.

93. On February 28, 2003, the Defendants debited Five Hundred Forty-Five and 00/100 Dollars (\$545.00) from Walsh's account, representing the second installment for the March 2003 payment.

94. On March 14, 2003, the Defendants debited Five Hundred Forty-Five and 00/100 Dollars (\$545.00) from Walsh's account, representing the first installment for the April 2003 payment.

95. On March 29, 2003, the Defendants debited Five Hundred Forty-Five and 00/100 Dollars (\$545.00) from Walsh's account, representing the second installment for the April 2003 payment.

96. On April 16, 2003, Walsh received a letter from her mortgage company stating that her loan payments for March and April, 2003, had not been paid and that Two Thousand Ninety-Seven and 61/100 Dollars (\$2,097.61) was currently due, including late charges that were included due to the Defendants' failure to make the payments.

97. Pursuant to Ind. Code § 24-5-0.5-3(a)(10), the Defendants are presumed to have represented at the time of the contract that they would perform the contracted services within a reasonable period of time.

98. The Defendants have yet to either make the mortgage payments, or issue a refund to Walsh.

COUNT I - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT

99. The transaction referred to in paragraphs 10, 18, 28, 36, 48, 56, 61, 71, 83, and 91 above are "consumer transactions" as defined by Ind. Code § 24-5-0.5-2(1).

100. The Defendants are "suppliers" as defined in Ind. Code §24-5-0.5-2(3).

101. By withdrawing funds from consumers' accounts, when the Defendants knew or reasonably should have known that they would not use those funds to make the mortgage payments on behalf of consumers, as referenced in paragraphs 10, 11, 12, 13, 14, 18, 19, 20, 21, 22, 23, 28, 29, 30, 31, 32, 36, 37, 38, 39, 40, 41, 42, 48, 49, 50, 51, 52, 56, 57, 61, 62, 63, 64, 67, 68, 71, 72, 73, 74, 75, 76, 77, 78, 79, 83, 84, 85, 86, 87, 91, 92, 93, 94, and 95, the Defendants violated the Indiana Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(1).

102. By representing that the Defendants would perform the contracted services within a reasonable period of time, as referred to in paragraphs 16, 26, 34, 46, 54, 59, 68, 81, 89, and 97 above, when the Defendants knew or reasonably should have known they would not, the Defendants violated the Deceptive Consumer Sales Act, Ind. Code § 24-5-0.5-3(a)(10).

**COUNT II - KNOWING AND INTENTIONAL VIOLATIONS OF THE
DECEPTIVE CONSUMER SALES ACT**

103. Plaintiff realleges and incorporates by reference the allegations contained in paragraphs 1 through 102 above.

104. The deceptive acts set forth in paragraphs 10, 11, 12, 13, 14, 16, 18, 19, 20, 21, 22, 23, 26, 28, 29, 30, 31, 32, 34, 36, 37, 38, 39, 40, 41, 42, 46, 48, 49, 50, 51, 52, 54, 56, 57, 59, 61, 62, 63, 64, 67, 68, 71, 72, 73, 74, 75, 76, 77, 78, 79, 81, 83, 84, 85, 86, 87, 89, 91, 92, 93, 94, 95, and 97 were committed by the Defendants with knowledge and intent to deceive.

RELIEF

WHEREFORE, the Plaintiff, State of Indiana, requests that the Court enter judgment against the Defendants, Equity Acceleration, Inc., and John Everett Davis, individually and doing business as Equity Acceleration, Inc., enjoining the Defendants, their agents, representatives, employees, successors, and assigns from the following:

- a. Representing expressly or by implication that the subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have, which the Defendants know or reasonably should know it does not have; and
- b. Representing expressly or by implication that the Defendants are able to deliver or complete the subject of a consumer transaction within a reasonable period of time, when the supplier knows or should reasonably know they could not.

AND WHEREFORE, the Plaintiff, State of Indiana, further requests the Court enter judgment against the Defendant for the following relief:

- a. Cancellation of contracts pursuant to Ind. Code § 24-5-0.5-4(d);
- b. Consumer restitution pursuant to Ind. Code §24-5-0.5-4(c)(2) and Ind. Code § 9-22-3-36, for reimbursement of all payments, late payments, and other funds remitted by consumers for the payment of their bi-weekly mortgage, including, but not limited to, the persons identified in paragraph 10, 18, 28, 36, 48, 56, 61, 71, 83, and 91 in an amount to be determined at trial;

c. Costs pursuant to Ind. Code § 24-5-0.5-4(c)(3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;

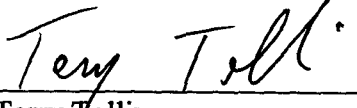
d. On Count II of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-4(g), for the Defendants' knowing violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana;

e. On Count II of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code § 24-5-0.5-8, for the Defendants' intentional violations of the Deceptive Consumer Sales Act, in the amount of Five Hundred Dollars (\$500.00) per violation, payable to the State of Indiana; and

f. All other proper relief.

Respectfully submitted,
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By:


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